(16)

HIGH COURT OF CHHATTISGARH AT BILASPUR

M.A. (C) No. 307/2007

Single Bench: **Hon'ble Shri Dilip Raosaheb Deshmukh, J.**

Appellant

Bisambhar Nath Kapur
Aged about 36 years
S/o-Devi das Kapur
R/o Tikrapara,
Pitar Colony Dhamtari
Tahsil & Distt-Dhamtari (CG)

Versus

Respondents

1. Smt. Savita Nirmalkar
W/o Late Narendra Nirmalkar-
Aged about 21 years
R/o Shitlapara, behind Masjid,
Kanker, Distt-Kanker (CG)

2. Nemichand
S/o Maksudan Chand Sahu
Aged about 25 years
R/o Village Ranwa, Tahsil &
District-Dhamtari
(Driver of the Vehicle)

Present: Shri Vivek Rathore, learned counsel for the appellant.

ORAL ORDER
(Passed on 13th March, 2007)

The following oral order of the Court was passed by Dilip Raosaheb Deshmukh, J.

2. The following points were urged by the learned counsel in this appeal.

A/ that there was contributory negligence on the part of the tractor in front of which the deceased was standing while the tractor was dashed by the truck owned by the appellant herein.

B/ that the owner of the tractor was not impleaded as a party in the application for compensation.

(17)

3. It is not disputed by the learned counsel for the appellant that the offending truck No. CG-05B 2315 was owned by the appellant and was not insured on the date of accident. It is also not disputed that the accident took place as the truck owned by the appellant dashed the tractor which was standing still on the road from behind. It is also not disputed that due to the accident, death of Narendra Nirmalkar was caused.

4. A perusal of the impugned order dated 3.2.2007 awarding interim compensation of Rs. 50,000/- on the principle of 'No Fault Liability' under Section 140 of the Motor Vehicle Act shows that the tractor was standing still on the road. The deceased was standing in front of the tractor and the truck owned by the appellant herein dashed the tractor from behind in such a manner that the deceased was also engulfed and died.

5. Since all these 3 necessary elements i.e. ownership of truck, it's not being insured at the time of the accident and death of Narendra Nirmalkar resulting due to the dashing of the tractor by the truck in question are not disputed, the learned M.A.C.T. has rightly awarded an interim compensation of Rs. 50,000/- against the appellant herein.

6. In this view of the matter, the arguments advanced by the learned counsel for the appellant have no force. The appeal being devoid of merit is dismissed at the stage of admission.

7. In view of the above, M.C.P. No. 423/2007 for grant of stay stands disposed of.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Pri,